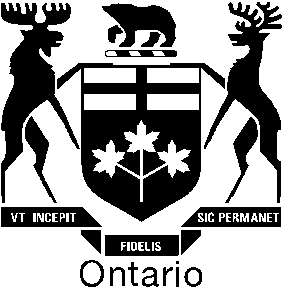
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| **Ontario Municipal Board** |
| Commission des affaires municipales  de l’Ontario |



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| **ISSUE DATE**: | August 22, 2014 | **CASE NO(S).:** | PL130601  PL131089  PL130630  PL130909  PL131311 |

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| **PROCEEDING COMMENCED UNDER** subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended | |
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| Appellant: | City of Hamilton |
| Applicant: | Fengate Capital Management Ltd. |
| Subject: | Consent to sever |
| Property Address/Description: | 1400 Upper James Street |
| Municipality: | City of Hamilton |
| Municipal File No.: | B-27/13 |
| OMB Case No.: | PL130601 |
| OMB File No.: | PL130601 |

LPF Realty Retail Inc. and Fengate Capital Management Ltd. have appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Hamilton to redesignate lands at 1400 Upper James Street from Residential to Open Space Commercial to permit a Storm Water Management Facility and extension of commercial parking area

Approval Authority File No. OPA-12-012

OMB Case No. PL131089

OMB File No. PL131089

LPF Realty Retail Inc. and Fengate Capital Management Ltd. have appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council’s refusal or neglect to enact a proposed amendment to Zoning By-law 05-200 of the City of Hamilton to rezone lands respecting 1400 Upper James Street from Urban Protected Residential “C” District Restricted Community Shopping & Commercial “HH” District to Conservation/Hazard Land (P5) Zone and Restricted Community Shopping & Commercial (“HH) to permit a Storm Water Management Facility and extension of commercial parking area

OMB Case No. PL131089

OMB File No. PL131090

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| **PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended | |
| Appellant: | DiCenzo Construction Company Limited |
| Subject: | By-law No. 13-126 |
| Municipality: | City of Hamilton |
| OMB Case No.: | PL130630 |
| OMB File No.: | PL130630 |
| **PROCEEDING COMMENCED UNDER** subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended | |
|  |  |
| Appellant: | DiCenzo Construction Company Limited |
| Subject: | Proposed Plan of Subdivision |
| Property Address/Description: | 1155 West 5th Street |
| Municipality: | City of Hamilton |
| Municipal File No.: | 25T-201202 |
| OMB Case No.: | PL130630 |
| OMB File No.: | PL130741 |
| **PROCEEDING COMMENCED UNDER** subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended | |
|  |  |
| Appellant: | DiCenzo Construction Company Limited |
| Subject: | Proposed Plan of Condominium |
| Property Address/Description: | 1155 West 5th Street |
| Municipality: | City of Hamilton |
| Municipal File No.: | 25CDM-201201 |
| OMB Case No.: | PL130630 |
| OMB File No.: | PL130742 |

DiCenzo Construction Company Limited has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council’s refusal or neglect to enact a proposed amendment to Zoning By-law 6593 of the City of Hamilton to rezone lands respecting 1125 West Fifth Street from "AA" (Agricultural District) to "RT-10"(Townhouse District) to permit the proposed townhouse development

OMB Case No. PL130909

OMB File No. PL130909

DiCenzo Construction Company Limited has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Hamilton to make a decision respecting a proposed plan of subdivision on lands respecting 1125 West Fifth Street in the City of Hamilton

(Approval Authority File No. 25T2012-06)

OMB Case No. PL130909

OMB File No. PL130910

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| 1804487 Ontario Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to the Official Plan for the City of Hamilton to redesignate lands 1041 West 5th Street to permit the development of a Medical Centre, Residential Care Facility and a Place of Worship  Approval Authority File No. OPA-12-024  OMB Case No. PL131311  OMB File No. PL131311  1804487 Ontario Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council’s neglect to enact a proposed amendment to Zoning By-law 6593 of the City of Hamilton to rezone lands respecting 1041 West 5th Street from “AA” Agricultural to “I3” Major Institutional to permit the development of a Medical Centre, Residential Care Facility and a Place of Worship  OMB Case No. PL131311  OMB File No. PL131312 | |
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| **APPEARANCES:** |  | |
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| **Parties** | **Counsel** | |
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| 1804482 Ontario Ltd. (“Sonoma”) | D. Baker | |
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| DiCenzo Construction Company Limited (“DCCL”) | S. Zakem | |
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| LPF Realty Retail Inc. (“LPF”) and Fengate Capital Management Ltd. (“Fengate”) | D. Tang | |
|  |  | |
| City of Hamilton (“City”) | M. Kovacevic and M. Minkowski | |
|  |  | |
| 1804487 Ontario Inc. (“487”) and A. De Santis Developments Ltd. (“De Santis”) | N. Smith | |

MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER JULY 8, 2014 AND ORDER OF THE BOARD

INTRODUCTION

1. This is the fourth pre-hearing in these proceedings.
2. These several files have been grouped to be heard together but are not consolidated.
3. The Board dealt with two matters at this pre-hearing:
   1. a settlement dealing with certain LPF Realty Retail Inc. (“LPF”) and Fengate Capital Management Ltd. (“Fengate”) matters specific to cases PL130601 and PL131089 and
   2. finalization of the Procedural Order to govern the hearing of the merits on the remaining matters, specifically PL131311, PL130630 and PL130909.

**SETTLEMENT HEARING: CASES PL130601 AND PL131089**

1. At the last pre-hearing the Board was advised that the City of Hamilton (‘City”) and LPF had reached a settlement dealing with case numbers PL130601 and PL131089.
2. DiCenzo Construction Company Limited (“DCCL”) is a party to both cases. 1804487 Ontario Inc. (“487”) and A. De Santis Developments Ltd. (“De Santis”) are parties to PL131089. No settlement was presented to the Board at that appearance since the parties were still in discussions to determine if a full settlement is achievable between all parties to these two cases. The parties have now reached a full settlement and no interest appeared in opposition.
3. The Board had before it the affidavit of George T. Zajac, a full Member of the Canadian Institute of Planners and a Registered Professional Planner qualified to provide independent expert land use planning opinion evidence in these proceedings.
4. LPF owns the subject lands, municipally known as 1400 Upper James Street.
5. These lands are currently vacant and abut an existing commercial plaza. The proposal is to develop an area beside and behind the existing plaza for 165 parking spaces. This expanded parking will allow for improvements to the truck parking area as well as accommodate parking for plaza tenants.
6. The proposal also includes the development of a storm water management pond on a portion of the lands.
7. The subject lands are governed by two zoning by-laws. To implement this proposal, LPF applied for an official plan amendment, amendments to the two applicable zoning by-laws, and for consent to convey the lands for the storm water management pond.
8. Two by-laws apply to the subject lands as a result of the City of Hamilton being the successor to certain area municipalities including the former Corporation of the City of Hamilton. By-law No. 6593 is the by-law of the former Corporation of the City of Hamilton; By-law No. 05-200 is the by-law of the City of Hamilton.
9. LPF and Fengate appealed the proposed official plan amendment and the two proposed zoning by-law amendments to this Board.
10. Consent to convey had been given by the City of Hamilton Committee of Adjustment. The City appealed that consent to this Board.
11. The Urban Hamilton Official Plan (“UHOP”) came into effect for these lands after the application was made for an amendment to the former official plan. The UHOP designations permit the proposed uses. The application for an official plan amendment is no longer needed. LPF and Fengate now withdraw their appeal of City Council’s refusal or neglect to enact the proposed official plan amendment.
12. LPF has agreed to sell the lands for the proposed storm water management pond to the City. Since the transaction is with the City, consent to convey is no longer required.
13. At the request and on consent of the parties, the City’s appeal is allowed and the application for consent is refused.
14. The Provincial Policy Statement (“PPS”) and the Growth Plan for the Greater Golden Horseshoe (“GGH”) both emphasize the importance of an efficient use of land and resources and direct growth to settlement areas.
15. The subject lands are within a settlement area. The proposal enhances the efficient use of the lands. The conveyance of the lands for the proposed storm water management facility enables the development of appropriate infrastructure to serve the community.
16. Taken together, the Board finds that the proposed zoning by-law amendments will result in a development that appropriately implements matters of provincial interest, as set out in s. 2 of the *Planning Act*, R.S.O. 1990, c. P.13 (“Act”), is consistent with the PPS, conforms to the GGH and conforms to the UHOP. In addition, the Board has had regard to the decision of Council to enter into Minutes of Settlement and support the proposed zoning by-law amendments.
17. Zoning By-law No. 05-200 is amended in accordance with Attachment 1 to this decision.
18. Zoning By-law No. 6593 is amended in accordance with Attachment 2 to this decision.
19. LPF had previously withdrawn its appeals in case PL130630, as noted in the Board’s decision arising from the last pre-hearing.
20. At this pre-hearing, LPF and Fengate are withdrawing as parties to PL130909 and to PL131311 and have advised the Board that they will take no further part in any hearing of the merits in these cases.

**PRE-HEARING FOR CASES PL130630, PL130909 AND PL131311**

1. The Board issued a Procedural Order previously when these three cases were being heard together with the two cases dealt with in the settlement hearing outlined above.
2. In light of ongoing settlement discussions regarding the LPF and Fengate matters, the Board agreed to delay the filing of the Issue List and the Order of Evidence to govern the hearing for these three cases.
3. The remaining parties for these three cases have now agreed on the Issue List, found at Attachment 3 to this decision.
4. The parties have also agreed on an order of evidence for these three cases, subject two conditions.
5. The first condition is that the agreement on the order of evidence is without prejudice to 1804482 Ontario Ltd. (“Sonoma”) seeking permission from the Board to proceed with the hearing of its matters notwithstanding any request for adjournment being made by another party.
6. The second condition mirrors the first in that the other parties all agree that the order of evidence will not be cited or used to counter a request by Sonoma to proceed in the event that the circumstances of the first condition are triggered.
7. The order of evidence is also found at Attachment 3 to this decision.
8. Subsequent to the July 8 appearance, but prior to the issuance of these written reasons, the parties advised the Board that they are engaged in settlement discussions and sought relief on certain filing dates and agreed to delay the start of the hearing to August 14 from August 11.

**ORDER**

1. The Board orders that:
   1. The City of Hamilton appeal in case PL130601 is allowed and the application for consent is refused.
   2. The appeal by LPF Realty Retail Inc. and Fengate Capital Management Ltd. regarding City of Hamilton Zoning By-law No. 05-200 is allowed in part and By-law No. 05-200 is amended in accordance with Attachment 1 to this decision.
   3. The appeal by LPF Realty Retail Inc. and Fengate Capital Management Ltd. regarding Zoning By-law No. 6593 of the former Corporation of the City of Hamilton is allowed in part and By-law No. 6593 is amended in accordance with Attachment 2 to this decision.
   4. The Procedural Order to govern cases PL130630, PL130909 and PL131311 is amended in accordance with paragraphs 25 through 30, above, and in accordance with Attachment 3 to this decision.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER

VICE CHAIR

**Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario

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